NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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3:30 p.m.

REGULAR SESSION

SENATOR DAVID CARLUCCI, Acting President

FRANCIS W. PATIENCE, Secretary

P R O C E E D I N G S

ACTING PRESIDENT CARLUCCI: The Senate will come to order.

I ask everyone present to please rise and repeat with me the Pledge of Allegiance.

(Whereupon, the assemblage recited the Pledge of Allegiance to the Flag.)

ACTING PRESIDENT CARLUCCI: In the absence of clergy, may we please bow our heads in a moment of silence.

(Whereupon, the assemblage respected a moment of silence.)

ACTING PRESIDENT CARLUCCI: The reading of the Journal.

THE SECRETARY: In Senate, Sunday, March 9th, the Senate met pursuant to adjournment. The Journal of Saturday, March 8th, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT CARLUCCI: Without objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Senator Libous.

SENATOR LIBOUS: Is there a message

from the Assembly, Mr. President?

ACTING PRESIDENT CARLUCCI: There is a message from the Assembly.

SENATOR LIBOUS: Could we have it read, please.

ACTING PRESIDENT CARLUCCI: The Secretary will read.

THE SECRETARY: Assembly Resolution Number 906, advising the Members of the Senate of the time and place of the joint session to cast a joint ballot for the purpose of electing Regents of The University of the State of New York pursuant to Section 202 of the Education Law.

ACTING PRESIDENT CARLUCCI: Senator Libous.

SENATOR LIBOUS: Mr. President, I move we adopt the message from the Assembly.

ACTING PRESIDENT CARLUCCI: All in favor of adopting the resolution signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT CARLUCCI: Opposed, nay.

(No response.)

ACTING PRESIDENT CARLUCCI: The

resolution is adopted.

Messages from the Assembly.

The Secretary will read.

THE SECRETARY: On page 17, Senator Carlucci moves to discharge, from the Committee on Health, Assembly Bill Number 5309A and substitute it for the identical Senate Bill Number 1207A, Third Reading Calendar 201.

ACTING PRESIDENT CARLUCCI: Substitution so ordered.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Libous.

SENATOR LIBOUS: Would you please call on Senator Valesky at this time.

ACTING PRESIDENT CARLUCCI: Senator Valesky.

SENATOR VALESKY: Mr. President, on behalf of Senator Savino, on page 16 I offer the following amendments to Calendar Number 188, Senate Bill 6619, and ask that said bill retain

its place on the Third Reading Calendar.

And also on behalf of Senator Savino, I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clauses: Senate Bills 2454, 4168, 4432, 4433, 4787, 4789, 5397A and 6139.

ACTING PRESIDENT CARLUCCI: So ordered.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

On behalf of Senator Maziarz, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause. That would be Senate Print Number 6325.

And on behalf of Senator Hannon, on page 9 I offer the following amendments to Calendar Number 104, Senate Print 6477, and ask that said bill retain its place on the Third Reading Calendar.

And, Mr. President, on behalf of Senator Gallivan, on page 17 I offer the following amendments to Calendar Number 199,

Senate Print 4343, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT CARLUCCI: So ordered.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

At this time I believe there's a previously adopted resolution at the desk by Senator Montgomery. It would be Resolution Number 3330. Could we have the title read, please, at this time, and I believe Senator Montgomery wishes to speak on the resolution.

ACTING PRESIDENT CARLUCCI: The Secretary will read.

THE SECRETARY: Legislative Resolution Number 3330, by Senator Montgomery, commending Marilyn Gelber upon the occasion of being honored in conjunction with Women's History Month 2014 in the State of New York.

ACTING PRESIDENT CARLUCCI: Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Mr. President.

I rise again today to honor one of

those women who I consider to be a phenomenal woman and certainly most deserving of our recognition during this special month recognizing women in our state.

I honor Marilyn Gelber not just for myself, but also for all of the residents and the elected officials of the Borough of Brooklyn as well as the State of New York.

Marilyn Gelber is the president or immediate past president of the Brooklyn Community Foundation, which was the first and only community foundation focused exclusively on organizations in Brooklyn. With the motto "Do Good Right Here," the Brooklyn Community Foundation provides a new philanthropic vehicle for giving to Brooklyn organizations, not-for-profit organizations who experience the complex challenges in the neighborhoods in our borough.

Prior to creating the Community Foundation, Marilyn Gelber was the founding executive director of the Independence Community Bank Foundation, which was Brooklyn's largest private charitable foundation and was created through the endowment gift from the Independence

Community Bank in 1998.

Ms. Gelber has built the Brooklyn Community Foundation into a better-resourced and broader-based philanthropic force for improving the lives of people in Brooklyn.

Ms. Gelber, prior to developing the Independence Community Foundation, served for 28 years in New York City's public sector as an urban planner and administrator. She was the first woman commissioner of the New York City Department of Environmental Protection. She was chief of staff to former Brooklyn Borough President Howard Golden, and she was director of neighborhood strategy planning for New York City's Department of City Planning.

Ms. Gelber was awarded the President's Medal of Brooklyn College and received an honorary doctorate from St. Joseph's College for her community service.

She is a lifelong New Yorker, a graduate of Queens College, the City University of New York, and a resident of the 25th Senate District.

So on behalf of all of the organizations and the citizens and the elected

officials in the Borough of Brooklyn, we are very, very pleased to honor this woman who has served so many of our neighborhoods and our citizens through her work as founder and president of the Brooklyn Community Foundation.

Thank you, Mr. President, for allowing me to honor Marilyn Gelber today.

ACTING PRESIDENT CARLUCCI: Thank you, Senator Montgomery.

This resolution was previously adopted.

Senator Libous.

SENATOR LIBOUS: Mr. President, could we now take up the reading of the noncontroversial calendar.

ACTING PRESIDENT CARLUCCI: The Secretary will read.

THE SECRETARY: Calendar Number 10, by Senator Bonacic, Senate Print 6247, an act to amend Chapter 510 of the Laws of 2013.

ACTING PRESIDENT CARLUCCI: There is a home-rule message at the desk.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT CARLUCCI: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CARLUCCI: Announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT CARLUCCI: The bill is passed.

THE SECRETARY: Calendar Number 86, by Senator LaValle, Senate Print --

SENATOR LIBOUS: Please lay this aside for the day, Mr. President.

ACTING PRESIDENT CARLUCCI: The bill will be laid aside for the day.

THE SECRETARY: Calendar Number 142, by Senator Maziarz, Senate Print 3646A, an act to amend the Arts and Cultural Affairs Law.

ACTING PRESIDENT CARLUCCI: Read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

ACTING PRESIDENT CARLUCCI: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CARLUCCI:

Announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT CARLUCCI: The bill is passed.

THE SECRETARY: Calendar Number 197, by Senator LaValle, Senate Print 3309, an act to amend the Correction Law.

ACTING PRESIDENT CARLUCCI: Read the last section.

THE SECRETARY: Section 3. This act shall take effect immediately.

ACTING PRESIDENT CARLUCCI: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CARLUCCI: Announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT CARLUCCI: The bill is passed.

THE SECRETARY: Calendar Number 201, substituted earlier today by Member of the Assembly Skoufis, Assembly Print Number 5309A, an act to amend the Public Health Law.

ACTING PRESIDENT CARLUCCI: Read the last section.

THE SECRETARY: Section 3. This act shall take effect immediately.

ACTING PRESIDENT CARLUCCI: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CARLUCCI: Announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT CARLUCCI: The bill is passed.

THE SECRETARY: Calendar Number 207, by Senator Marcellino, Senate Print 1513, an act to amend the Criminal Procedure Law.

SENATOR GIANARIS: Lay it aside.

ACTING PRESIDENT CARLUCCI: Lay the bill aside.

THE SECRETARY: Calendar Number 212, by Senator Klein, Senate Print 2431, an act to amend the Penal Law.

ACTING PRESIDENT CARLUCCI: Read the last section.

THE SECRETARY: Section 6. This act shall take effect on the first of November.

ACTING PRESIDENT CARLUCCI: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CARLUCCI: Announce the results.

THE SECRETARY: Ayes, 57. Nays, 3. Senators Hassell-Thompson, Montgomery and Perkins recorded in the negative.

ACTING PRESIDENT CARLUCCI: The bill is passed.

THE SECRETARY: Calendar Number 214, by Senator Hannon, Senate Print 2941, an act to amend the Penal Law.

ACTING PRESIDENT CARLUCCI: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT CARLUCCI: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CARLUCCI: Announce the results.

THE SECRETARY: Ayes, 58. Nays, 2. Senators Montgomery and Peralta recorded in the negative.

ACTING PRESIDENT CARLUCCI: The bill is passed.

Senator Libous, that completes the reading of the noncontroversial calendar.

SENATOR LIBOUS: Thank you, Mr. President. Could we now go to the controversial reading of the calendar.

ACTING PRESIDENT CARLUCCI: The Secretary will ring the bell.

The Secretary will read.

THE SECRETARY: Calendar Number 207, by Senator Marcellino, Senate Print 1513, an act to amend the Criminal Procedure Law.

SENATOR SQUADRON: Explanation.

ACTING PRESIDENT CARLUCCI: Senator Squadron has requested an explanation.

Senator Marcellino for an explanation.

SENATOR MARCELLINO: Thank you, Mr. President.

This bill was taken up by my office because several attorneys practicing law and some judges that we had talked to agreed that in certain circumstances the disclosure of the names, addresses and occupations of the potential jurors, the jurors who may be impaneled in a particular case, might expose them to physical

harm, injury, harassment or whatever. So we put the bill in to protect these jurors or potential jurors.

The lawyers and the judges have said that they found it very difficult in certain circumstances and certain very high-profile cases, that it was difficult to get a full jury and to get a willing jury to participate. So we put the bill in to make that problem go away and to protect the health, safety and viability of the jury system.

ACTING PRESIDENT CARLUCCI: Senator Squadron.

SENATOR SQUADRON: If the sponsor would yield for a couple of questions.

SENATOR MARCELLINO: Sure.

ACTING PRESIDENT CARLUCCI: The sponsor yields.

SENATOR SQUADRON: Thank you.

Is the sponsor aware of which other states have provisions such as this one?

SENATOR MARCELLINO: No, I'm not.

ACTING PRESIDENT CARLUCCI: Senator Squadron.

SENATOR SQUADRON: If the sponsor

would yield again.

SENATOR MARCELLINO: Sure.

ACTING PRESIDENT CARLUCCI: The sponsor yields.

SENATOR SQUADRON: Is the sponsor aware of any states in which a failure to have anonymous juries comply with federal regulations has actually led to convictions being thrown out by higher courts?

ACTING PRESIDENT CARLUCCI: Senator Marcellino.

SENATOR MARCELLINO: I am aware of cases where the defendant or defense attorneys have brought cases that this would be an infringement upon their client's rights. These cases have gone up to the Second Circuit Court of Appeals and I believe even to the Supreme Court, and they've been held constitutional.

ACTING PRESIDENT CARLUCCI: Senator Squadron.

SENATOR SQUADRON: If the sponsor would continue to yield.

SENATOR MARCELLINO: Yes.

ACTING PRESIDENT CARLUCCI: The sponsor yields.

SENATOR SQUADRON: Can the sponsor describe the federal guidelines for impaneling of jurors for anonymous juries and --

SENATOR MARCELLINO: Mr. President, I am not a lawyer. I don't pretend to be a lawyer. And I am not qualified to describe what my colleague would like me to describe. So therefore I'm going to simply say I can't answer the question.

ACTING PRESIDENT CARLUCCI: Senator Squadron.

SENATOR SQUADRON: If the sponsor would continue to yield.

SENATOR MARCELLINO: Yes.

ACTING PRESIDENT CARLUCCI: The sponsor yields.

SENATOR SQUADRON: The sponsor and I share a lack of being lawyers.

SENATOR MARCELLINO: Then let's not get into that.

SENATOR SQUADRON: That seems to be an ongoing theme this year in this house.

SENATOR MARCELLINO: It works for me.

SENATOR SQUADRON: But I do think,

regardless of what degrees we hold, it's critical that we do two things. One, we make sure that we're not passing criminal procedure laws in this state that's going to lead to convictions being thrown out based on a failure to comply with --

ACTING PRESIDENT CARLUCCI: Senator Squadron, are you on the bill?

SENATOR SQUADRON: No, I'm asking a question, Mr. President.

ACTING PRESIDENT CARLUCCI: Okay. Please.

SENATOR SQUADRON: Thank you.

I think that two things are critical. The first is to ensure that we don't pass laws in this state that lead to convictions getting thrown out because of a failure to comply with basic constitutional rights, with extensive case law, federal and across the states.

And I also think it's critical that we are very, very mindful of the details when it comes to protecting folks' presumption of innocence, which is a bedrock of our country.

And so I do worry a little bit about sort of the difficulty in engaging some of these questions.

ACTING PRESIDENT CARLUCCI: Senator Squadron, is there a question for the sponsor?

SENATOR SQUADRON: Yes. In that context, would the sponsor talk a little bit about the federal guidelines for when it's appropriate to impanel a jury.

ACTING PRESIDENT CARLUCCI: Senator Marcellino.

SENATOR MARCELLINO: I've been told by many different lawyers that we've talked to over the years -- this bill has been brought up on multiple occasions, and they find it very difficult to impanel a jury in certain cases, certain high-profile drug cases, certain other types of cases, international terrorism and so forth, finding that it's very difficult to get jurors to willingly join a panel for fear of their own health and safety and for fear of the safety of their families.

So that by itself would corrupt the system that you're trying to protect and we're all trying to protect.

The fact that you can have a defendant appear in shackles, upon occasion. If that's necessary and the court has said that this

client can't be kept quiet or can't behave himself, they will shackle that particular person. They've put the defendant in other rooms when their behavior is acting out and violent in nature. They've moved them to different parts of the courtroom and out of the chamber and out of the sight of the jury when they scream out or refuse to behave themselves.

The fact that there are cases where clients come in in prison garb, as opposed to that. So there are many cases when they don't come in in a suit and tie, which one might say that might influence the jury that this person is guilty before the trial is even held.

And by the way, in the reading that we did in preparation for this, the presumption of innocence, I don't know that it's really the right word to use. Perhaps the assumption that you're guilty until proven innocent -- that you're innocent until proven guilty, that might be the case. But I don't know that I'd use the word "presumption," that it's that you're presumed to be innocent. You are assumed to be innocent unless there's evidence that convinces the jury that you are guilty in fact.

So I think we have many different places to go. I do know that this has been brought to the 2nd Court of Appeals, it has been found constitutional, it has been found okay to do this, and it is done in other places. Again, I'm not -- I just don't know offhand the different states where it might be.

But there are infamous cases, the Nicky Barnes trial, where Nicky Barnes, who everybody knows was an infamous drug dealer, was used as an informant for many years. It was difficult to impanel a jury. The jury was made anonymous in that case. The defendants -- they tried the case, they appealed it, their case was thrown out. Their appeals were thrown out unanimously by the courts that their rights were not violated.

So in this case we do believe that this is an important thing to protect the jury system. If a jury is -- if a juror is fearful, fearful of his health and safety, if they can get to him so easily because of his place of employment or his home address or his last name -- we can find your family, we can find your children, we can harass you any which way we

want -- that scares a lot of people and will corrupt the system.

So therefore we feel that this is an absolute necessity as a tool. Not in every case, because the law clearly states that the prosecutor must prove, must prove to the judge that this is a necessity in this instance.

You just can't say "Judge, we would like it to happen" and the judge will concur. The judge has to agree that the prosecutor has proven by a preponderance of the evidence that this is an important step and it is necessary to preserve the credibility of the jury and the whole system.

ACTING PRESIDENT CARLUCCI: Senator Squadron.

SENATOR SQUADRON: Thank you. If the sponsor would continue to yield.

SENATOR MARCELLINO: Sure.

ACTING PRESIDENT CARLUCCI: The sponsor yields.

SENATOR SQUADRON: Thank you.

And I thank the President for his understanding as my question rambles a little bit.

Through you, Mr. President, in paragraph 4 of the bill it says that only upon request by a defendant, but not otherwise, should a jury be informed that their anonymity should not be prejudicial.

Is it the sponsor's intent that in some cases a jury would be impaneled and would not be advised at any point by the judge that they shouldn't consider that to be a sign of guilt?

ACTING PRESIDENT CARLUCCI: Senator Marcellino.

SENATOR MARCELLINO: I think any judge worth his or her salt would simply tell the jury: Do not use this as an indication of a presumption or an assumption of guilt.

And that is done in many cases. The fact that a client might be -- a defendant might be put in another room because of some outburst, might be appearing in shackles because they've threatened or attacked the guards on their way in and the court is fearful that the action of the defendant might cause harm to others, the judge will simply state to the jury: Don't assume and don't use this as an indication that we're saying

this person is guilty. You have to take a preponderance of the evidence and you have to look at the evidence that is produced by the prosecutor and determine on the basis of the evidence, not this action but the basis of the evidence that this person is guilty and deserving to go to jail, and on no other case.

So I would assume the judge -- and again, I believe in the old rule you never assume, for the obvious reason. But it would be, I think, dereliction of the judge's duty who didn't make that declaration.

SENATOR SQUADRON: If the sponsor would continue to yield.

SENATOR MARCELLINO: Sure.

ACTING PRESIDENT CARLUCCI: The sponsor yields, Senator Squadron.

SENATOR SQUADRON: If that's the sponsor's view about what any judge worth his or her salt should do, not making any assumptions, of course, but that's a basic quality of any judge, why have this provision that suggests that judges should only inform the jury that they shouldn't be prejudiced by this fact if the defense asks for it?

ACTING PRESIDENT CARLUCCI: Senator Marcellino.

SENATOR MARCELLINO: I'm sorry, would you just repeat that again?

SENATOR SQUADRON: Absolutely.

ACTING PRESIDENT CARLUCCI: Senator Squadron.

SENATOR SQUADRON: If it's the sponsor's contention that any judge worth his or her salt would inform a jury that they shouldn't be prejudiced by its impaneling or its anonymity, why put a provision in the sponsor's bill that says that judges don't have any affirmative obligation to inform a jury of that, and in fact that the defense has to request it?

SENATOR MARCELLINO: The bill leaves it up to the defendant. The defendant can make that decision whether they feel that they should have that statement made by the judge or not. It's up to the defendant.

ACTING PRESIDENT CARLUCCI: Senator Squadron.

SENATOR SQUADRON: If the sponsor would continue to yield.

SENATOR MARCELLINO: Sure.

ACTING PRESIDENT CARLUCCI: The sponsor yields.

SENATOR SQUADRON: I noticed that one of the factors to consider is the seriousness of the charges against the defendant. What standards for making juries anonymous in other jurisdictions, either federally or in other states, was that factor based on?

ACTING PRESIDENT CARLUCCI: Senator Marcellino.

SENATOR MARCELLINO: I'm not sure what's going on in the mind of other states or what's occurred in other states.

But it would seem to me that in various cases of extreme profile where you have defendants that -- or gangs that have come out, and friends or potential friends of the defendant, or potential people who just act out and make a statement that they're going to get the jury -- this has happened before. We've seen it before. It's been in the media where the media is such a high-profile situation where jurors are hounded constantly by the press or by media and have no private lives, where their families can't be allowed to live in peace and

serenity.

These things do happen. And in this case the prosecutor may say this whole thing is becoming a difficult situation, we have jurors who have declined and don't want to be sit in a panel, don't want to be impaneled. Then you have to force them to come in and be impaneled. And that, to me, would be a bigger risk to the defendant than having their names be anonymous.

SENATOR SQUADRON: If the sponsor would continue to yield.

SENATOR MARCELLINO: Yeah, I will.

ACTING PRESIDENT CARLUCCI: The sponsor yields.

Senator Squadron.

SENATOR SQUADRON: And I know the issue about membership in gangs or in other organized crime, that's a separate additional factor in this bill. And the idea of publicity around a trial, that's also a separate additional factor in this bill.

The factor that I was asking about was, to quote the bill, the seriousness of the charges against the defendant. Is it the sponsor's intent that in a more serious crime,

the charges are more heinous and disturbing, that it would be more likely that the court would make the jury anonymous? Separate from the other factors, is that the intent?

ACTING PRESIDENT CARLUCCI: Senator Marcellino.

SENATOR MARCELLINO: If the defendant is being arrested on pickpocket charges, I would consider the case somewhat light, serious no less. A case where a trial, jail time might be warranted, a fine might be warranted.

But if it's a case where the defendant is accused of mass murder, throwing bombs into crowded theaters, shooting up a school building, I would consider those charges somewhat more serious. I would think you would too.

SENATOR SQUADRON: Thank you. On the bill, Mr. President.

ACTING PRESIDENT CARLUCCI: Senator Squadron on the bill.

SENATOR SQUADRON: And I thank the sponsor for the conversation on this bill. It's one that has come before us before.

As I've looked more at it and

understand the details more, I become more and more concerned about this bill. Because this is not new terrain that we're covering here in the New York State Senate, it's terrain that's been covered in other states, been covered extensively by the federal courts.

There is in fact a standard for how to do this. And it's an important thing, an important tool in the toolbox certainly in federal trials; also, on occasion, in other states.

The federal test that exists is one that has been developed over decades and is not one that this bill maintains. The factor we were just discussing, for example, doesn't even exist in the federal test. In fact, the suggestion that the more serious the crime charged, the more likely the jury would be anonymous, is inconsistent with federal law.

In federal law, when you have a capital case, the most serious possible cases, there's an additional standard before you do this. Because in the most serious cases, being able to know that you have a fair trial, being able to know that the punishment, severe

punishment -- which is often deserved in these cases -- has in fact been come to through the full due process, the full constitutional rights afforded every defendant, is that much more important. Which is sort of in conflict with what we heard the sponsor say today.

We also heard the sponsor say that all sorts of other activities happen -- shackles, folks sometimes even been taken to other rooms, all sorts of other behavior. As New York's courts have pointed out, that happens subsequent to behavior that leads to that sort of additional measure that can be seen by the jury that might have a prejudicial effect on the jury because of something that's been proven and has happened.

What we're talking about here is before a case starts. All that's happened is an indictment. Which courts have been very clear, indictment itself isn't a reason to do this, isn't a reason to create an anonymous jury.

We're saying before the defendant does anything that would suggest that they've given up one of their rights, we're going to take away their right to understand who's on the jury, we're going to take away their ability to do a

full questioning of jurors before they're selected, we're going to take away the basic ability to know that you are being judged by a jury of your peers. It's completely a different case than the one the sponsor used to justify this.

Look, the truth is there are some instances in which anonymous juries make sense. There are some instances I believe in New York State in which anonymous juries would make sense where right now the courts have found that it's difficult. The sponsor raised one of those issues.

This bill doesn't do it. It creates a factor that is likely to get thrown out. You're going to have people convicted of crimes who are going to have their convictions thrown out if this becomes law.

And it's not nearly careful enough and respectful enough of the right both of the press -- the First Amendment right to information -- and the right to a fair trial that every defendant is afforded the presumption -- not assumption, but the presumption of innocence that defendants go into their due process with

fully.

So this is a bill that doesn't work on either side. And, you know, I think that when you're talking about this sort of basic right that every single one of us has in this country, you have to know what's happening in other states. You have to know what's happening in the federal government. You have to know that you're doing it in the right way and you're doing it in a way that's not going to put our state judicial system at risk.

And so for that reason today, unfortunately, though it is an issue that needs to be solved by the state, I will vote no on the bill.

Thank you, Mr. President.

ACTING PRESIDENT CARLUCCI: Thank you, Senator Squadron.

Senator Hoylman.

SENATOR HOYLMAN: Thank you, Mr. President. On the bill.

I wanted to thank my colleagues for that spirited debate. As a lawyer, I learned a lot. And I think we lawyers know that being a lawyer is largely just a piece of paper. Anyone

can read the law and understand it, as clearly my colleagues do.

I wanted to concur with my colleague Senator Squadron. You know, the Sixth Amendment of the Constitution dates back, of course, to 1789. And it's founded on a principle of openness and a right to a public trial by an impartial jury.

And we've said for over 200 years that the application of our laws is a matter of public interest, one deserving of public scrutiny. And I'm concerned, Mr. President, that this legislation, by allowing criminal suspects to be judged by anonymous individuals, fundamentally undermines that principle.

We have a long history, as I mentioned, of court proceedings that are open to public scrutiny. I think we've heard of trials of notorious criminals where jurors were public and well-known. Al Capone, Lucky Luciano, they were found guilty in public trials.

I'll add that the American Bar Association has said that courts should limit the use of anonymous juries to compelling circumstances, such as when the safety of the

jurors is at issue or when there's a finding by the court that efforts are being made to intimidate or influence the jury's decision.

I think that this bill, Mr. President, goes way beyond those recommendations by the American Bar Association, allowing not just anonymity to be used where there's a clear showing that the juror's safety is endangered or that efforts have been made to tamper with the jury. It's also based vaguely, as my colleague has stated, on the seriousness of the charges against the defendant.

But, Mr. President, I'd like to focus on another aspect that was touched on, the extent of pretrial publicity concerning the criminal action or proceeding.

In Section 2 we read in the bill that the people bear the burden of proving that there's clear and convincing evidence that a protective order is necessary to protect against the likelihood of bribery, jury tampering or physical injury to or harassment of the jurors or prospective jurors.

And that's the part that concerns me, because in the following section another

factor is the extent of pretrial publicity concerning the criminal action or proceeding. Those can be the basis for impaneling an anonymous jury.

I call it like the "US Weekly clause." If there is a website like TMZ or People Weekly interested in a criminal court proceeding, according to this bill, Mr. President, that would be the basis for a prosecutor asking that the jury be impaneled in an anonymous fashion. I don't think that's good enough for our system of justice.

I think also that the anonymity can be a perverse incentive for jury tampering by not allowing the prosecution or the press to investigate the jurors' backgrounds.

This happened here in New York back in 1987 when John Gotti was being tried. One of the anonymous jurors was later convicted of selling his vote to acquit Gotti. Had the jury not been anonymously selected, I contend that it's likely that somebody in the media -- I don't think it would be TMZ, but it might be a reputable publication might have found that his vote had been compromised during that trial.

Now, trials of accused terrorists and alleged mobsters, drug dealers, are really exceptions in our criminal system. I'm concerned, though, Mr. President, that the broad language of this bill really swallows that exception, and therefore I'll be voting in the negative.

Thank you.

ACTING PRESIDENT CARLUCCI: Thank you, Senator Hoylman.

Are there any other Senators wishing to be heard?

Senator Marcellino.

SENATOR MARCELLINO: Just one point.

The point is that this law is not intended for every trial, it's only in very limited use. The guidelines in this bill are a compilation of all of the federal guidelines that exist on these issues. Perhaps I didn't explain it as clearly as I should have, but that is in fact what I'm assured is the case from our counsel.

And I'm also told that there hasn't been a trial overturned anywhere, ever, when an

anonymous jury was impaneled. Ever.

Thank you, Mr. President.

ACTING PRESIDENT CARLUCCI: Thank you, Senator Marcellino.

Are there any other members wishing to be heard?

Seeing none, the debate is closed. The Secretary will ring the bell.

Read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

ACTING PRESIDENT CARLUCCI: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CARLUCCI: Senator DeFrancisco to explain his vote.

SENATOR DeFRANCISCO: Before you vote no, I want to explain why this is a good bill.

Seriously, Senator Marcellino did a wonderful job explaining this bill. And as far as due process is concerned, what this bill does is actually just give the presiding judge the opportunity to keep jurors' names and addresses confidential to avoid influence or to avoid

physical injury on any of those jurors.

He's absolutely right, in high-profile cases jurors will often give any reason they can possibly think of, like "I won't be fair and impartial," to avoid jury duty. And one of the reasons I've found that that happens is they just are afraid, in a criminal case, to sit there in judgment.

This satisfies due process because it's not an automatic thing. Or it's not something the judge can do alone or the prosecutor can do alone, it's a procedure. A hearing is held. And the hearing requires that the prosecutor not only prove that one of these things might happen or could happen, but by clear and convincing evidence that there's a danger of some of these problems occurring.

So I think it satisfies due process. It will also help get jurors feeling comfortable in high-profile cases. And it's at the discretion of the presiding judge. And that's what we pay them for, to make decisions like this in cases, serious cases in the State of New York.

So I vote aye. And thank you for the time, Mr. President.

ACTING PRESIDENT CARLUCCI: Thank you.

Senator DeFrancisco will be recorded in the affirmative.

Senator Squadron to explain his vote.

SENATOR SQUADRON: Thank you. Any opportunity to follow Senator DeFrancisco.

Just a brief correction of the sponsor's final comment. In 2011 the Oregon Supreme Court threw out the conviction of a sex offender because the judge hadn't sufficiently told the jury not to be prejudiced by exactly the sort of thing that this bill would allow.

Thank you. I vote no, Mr. President.

ACTING PRESIDENT CARLUCCI: Senator Squadron to be recorded in the negative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 207 are Senators Hassell-Thompson, Hoylman, Krueger, Montgomery, Perkins, Sanders, Serrano and Squadron. Also Senator Espaillat.

Ayes, 52. Nays, 9.

ACTING PRESIDENT CARLUCCI: The bill is passed.

Senator Libous.

SENATOR LIBOUS: Mr. President, can we go back to motions. I have a very important motion before the house.

ACTING PRESIDENT CARLUCCI: Motions and resolutions.

SENATOR LIBOUS: On behalf of Senator Libous, I move that the following bill be -- that was supposed to be funny.

(Laughter.)

SENATOR LIBOUS: Thank you.

I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause. That would be Senate Print 4001.

ACTING PRESIDENT CARLUCCI: So ordered.

SENATOR LIBOUS: Thank you, Mr. President.

Is there any further business at the desk?

ACTING PRESIDENT CARLUCCI: There

is no further business, Senator Libous.

SENATOR LIBOUS: There being no further business, I would like to remind the members of the house that there will be a joint meeting with the Assembly tomorrow at noon, and then we will have our own session following the Assembly joint session at 3:00 p.m.

So the Senate will adjourn until tomorrow, March 11th, at 3:00 p.m.

ACTING PRESIDENT CARLUCCI: There being no further business before the Senate, on motion, the Senate stands adjourned until Tuesday, March 11th, at 3:00 p.m.

(Whereupon, at 4:12 p.m., the Senate adjourned.)